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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : 19 CR 169 (VM)
:
-against- :
:
ALBERTO PELLOTT, : ORDER
:
Defendant. :
-----X
VICTOR MARRERO, U.S.D.J.:

On February 28, 2020, the Court sentenced defendant Alberto Pellot ("Pellot") to sixty months' imprisonment followed by four years of supervised release. (See Dkt. No. 149.) The Court granted two adjournments of Pellot's surrender date due to the ongoing COVID-19 pandemic. (See Dkt. Nos. 164, 189.) By letter dated August 20, 2020, Pellot requests a third extension of his surrender date. (See attached letter.) Pellot argues that it would be dangerous to his health to enter a facility given the ongoing concerns about the prevalence of COVID-19 in prisons. Pellot further argues that he should be permitted to surrender at roughly the same time as his codefendants, whose sentencings have been adjourned due to the pandemic, and that he should not be penalized for quickly pleading guilty. Finally, Pellot states that he is not a danger or flight risk, and that he has remained in full compliance with the terms of his release. According to Pellot, while the Government does not consent to his latest request for an adjournment of his surrender date, the Government does not intend to formally oppose the request.

The Court will grant a 45-day adjournment of Pellot's surrender date. The Court understands the ongoing risks presented by COVID-19 to Pellot given his health conditions. However, without more specific information about conditions at F.C.I. Fort Dix -- the facility to which Pellot will report -- the Court is not persuaded that a third 60-day adjournment is necessary to mitigate those risks.

Accordingly, it is hereby ordered that Pellot's surrender date be adjourned for an additional 45 days.

SO ORDERED:

Dated: New York, New York
24 August 2020


Victor Marrero
U.S.D.J.

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August 20, 2020

By Email

Honorable Victor Marrero
United States District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

U.S. v. Alberto Pellot,
19 Cr. 169 (VM)

Your Honor:

I represent Alberto Pellot in the above-captioned case and I write respectfully to request a 90-day adjournment of his surrender date – until November 30, 2020. Mr. Pellot was sentenced on February 28, 2020, to 60 months in prison. His surrender date was originally scheduled for April 28, 2020. After the pandemic’s onset, the Court adjourned the surrender date for 60 days “subject to further extension in the event the virus has not been officially declared materially changed by then.” Dkt. No. 164. The Court granted a second 60-day adjournment in June and Mr. Pellot is now scheduled to report to Fort Dix FCI on August 28, 2020. Both of those adjournments were on the government’s consent.

Alberto is in terrible health and he would be in grave danger were he to enter a prison at this time. As documented in the PSR, Mr. Pellot is obese and has serious heart and renal conditions. PSR ¶¶ 94-98. He also has degenerative joint disease and arthritis. PSR ¶ 95. He walks with a cane and has limited mobility. In addition, Alberto has a history of kidney stones requiring hospitalization. PSR ¶¶ 94-98. He has “right bundle branch block,” a condition delaying and blocking the pathway of electrical impulses that make his heartbeat. *Id.* His heart condition and obesity place him at heightened risk should he contract COVID-19. *E.g.*, Roni Caryn Rabin, *Obesity Linked to Severe Coronavirus Disease, Especially in younger Patients*, N.Y. Times (last updated Apr. 17, 2020).¹

Although almost certainly underreported, official statistics within the Bureau of

¹ <https://www.nytimes.com/2020/04/16/health/coronavirus-obesity-higher-risk.html>.

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Prisons (“BOP”) detail over 11,500 confirmed COVID-19 cases and 106 deaths among prisoners.² The BOP has continued various COVID-19 response measures, including isolating and quarantining inmates, suspending visitations, and limiting prisoner movement. FCI Fort Dix has reported 37 COVID-19 cases,³ but it is unclear whether there has been widespread testing since a class action filed against it in the United States District Court for the District of New Jersey was dismissed in May. Of course, adding prisoners is the last thing the already over-burdened prison system needs at this moment.

Under these circumstances, I respectfully urge the Court to adjourn Mr. Pellot’s report date so that he can remain safe for a few more months and enter prison when it will not be dangerous to his life at a time when he will be able to serve out the full sentence imposed by the Court.

I respectfully submit that it does not make sense to require Mr. Pellot to enter a prison facility right now. Given his serious health issues, should he enter prison this month, he may very quickly find himself filing a non-frivolous compassionate release application which, at an early time in his 60-month sentence, would eliminate most of the incarceratory sentence. On the other hand, if Mr. Pellot is afforded just a few more months to surrender, a vaccine may be at hand the danger substantially lessened. He will be able to serve the entire sentence imposed by the Court.

Mr. Pellot’s surrender date has been adjourned twice because he was originally scheduled to report at the height of the pandemic’s first wave in this region. Today, a vaccine is in sight, and the head of the Secretary for Health and Human Services believes it may be available as soon as December. *See* Joanna Walters, *Coronavirus: Health Secretary Alex Azar Expects U.S. Vaccine by December*, The Guardian (Aug. 11, 2020);⁴ *see also* Angus Whitley, *Fauci Says “Reasonable” to Expect COVID-19 Vaccine by December*, Bloomberg Law (July 28, 2020).⁵

In addition, adjourning Mr. Pellot’s surrender date will allow him to surrender at roughly the same time as his codefendants in this case, whose sentencings have been adjourned until September. Right now, Mr. Pellot is the only one out of four defendants on this indictment who are released on bail who is scheduled to report during the pandemic. His codefendants, several of whose sentences are approaching in September,

² <http://www.bop.gov/coronavirus>.

³ *Id.*

⁴ <https://www.theguardian.com/world/2020/aug/11/CoronaVirus-vaccine-health-secretary-alex-azar-december>.

⁵ <https://news.bloomberglaw.com/health-law-and-business/fauci-says-reasonable-to-expect-covid-19-vaccine-by-december>.

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may not have to report before there is a vaccine. Requiring Mr. Pellot to surrender right now and be subject to enormous health risks – and even risk to his life – would, in effect, penalize him for being the swiftest defendant in the case to accept responsibility and plead guilty.

Assistant United States Attorney Sebastian Swett informs me that his “is not prepared to consent to another adjournment.” Pretrial Services Officer Bernisa Mejia informs me that her office takes no position and defers to the Court. But Officer Mejia notes that Mr. Pellot remains in perfect compliance with the terms of his release, as he has been for the past 20 months.

Mr. Pellot knows that he must serve a prison sentence for his conduct selling drugs near his rehab facility during his lifetime of cycling between heroin abuse and recovery. As his counsel, I respectfully submit that his prison sentence can be fully served even if delayed by a few more months. In fact, if Mr. Pellot is able to enter prison at a time when he will be in less jeopardy, then he will be more likely to serve the entirety of the sentence imposed by the Court – without seeking compassionate release or facing an intolerably high risk of severe illness or death.

I therefore respectfully request that the Court adjourn Mr. Pellot’s report date by 90 days – until November 30, 2020. By that time, we will know whether a vaccine is close at hand, and the jails may have a firmer handle on their own situations. Mr. Pellot has remained in full compliance with the terms of his release, as confirmed to me just yesterday by Pretrial Officer Mejia. He is not a danger or a risk of flight. He will be ready to surrender in a few months, when it will be less dangerous to his life.

Thank you for your consideration of this request.

Respectfully submitted,

/s/ Benjamin Silverman
Benjamin Silverman

cc: AUSAs Sebastian Swett and Justin Rodriguez (by email)
Pretrial Services Officer Bernisa Mejia (by email)
Alberto Pellot (by U.S. mail)